

November 7, 2009

Mr. SCOTT of Virginia: Mr. Speaker, all afternoon we have heard about the "freedom" to be uninsured. Seniors in my district do not want us to repeal government run Medicare so that they can enjoy a "freedom" to be uninsured, and those without insurance now do not view themselves as enjoying some "freedom"; they want insurance.

The Republican substitute responds to the comprehensive Affordable Health Care for America Act with a bill that fails to reduce costs, fails to cover uninsured Americans, and it may study - but it does not help - those with pre-existing conditions. It does, however, attack innocent victims of medical malpractice.

One recent study showed that medical malpractice represents less than one-third of one percent of all health care costs. And yet the Republican substitute seeks to blame our broken health care insurance system on innocent victims of medical malpractice. For those victims, the bill limits the ability to hire a lawyer, complicates the lawsuit, shifts the costs of medical malpractice from the doctor to the victims' own private insurance, and in some cases causes the injured victims to lose the right to sue before they even know they've been injured. I'd like to share some specific examples of the egregious provisions included in the Republican substitute.

Under the Republican substitute, a young child whose life is forever devastated by medical malpractice can lose all right to sue on his or her eighth birthday - long before he or she reaches legal age to make his or her own decision.

Under the Republican substitute, when two or more wrongdoers act together, and one of them

is able to flee or put their assets out of reach, the innocent victim is left short, while the other wrongdoer is shielded from full responsibility. They call this the "fair share rule."

Under the Republican substitute, it is more difficult for a medical malpractice victim to get a lawyer's help to fight against the insurance companies, because the bill permits a court to reduce the fee paid to the victim's lawyer - after the case has been fought and won. This provision penalizes victims with winning cases. One would think the purpose of this provision is to save the insurance carrier money and thereby reduce malpractice premiums; however, insurance carriers are not responsible for the victim's lawyer's fee. Insurance carriers are responsible for the defendant's lawyer's fee, so permitting the court to reduce fees paid to defendant's lawyers would actually save money and reduce premiums. The substitute does not allow that. This makes no sense. Under current practice, the victim's lawyers already don't get paid if the victim loses. Now they might not get paid even if the victim wins.

Under the Republican substitute, if the victim has health insurance that helps pay for the victim's care while the victim is waiting for the wrongdoer to be held accountable, the wrongdoer can escape legal accountability for that part of the cost entirely. The wrongdoer gets to shift the cost onto the victim's own health insurance. That's the Republican approach to health insurance reform - saddling the victim's insurer with the cost of someone else's negligence, while letting the wrongdoer off the hook.

Under the Republican substitute, the only time punitive damages would ever be available is when the wrongdoer has maliciously injured the victim - that is, when the wrongdoer has committed a violent felony. And even then - even in cases of the most heinous violence imaginable - the Republican substitute caps punitive damages.

The Republican substitute is empty of any meaningful health insurance reform, and it is utterly callous to malpractice victims. None of these unfair provisions were passed during previous attempts when the Republicans controlled the House, the Senate and the White House, and they should not be passed now. The substitute should be defeated.

In contrast, the Majority's Affordable Health Care for America Act reduces the number of uninsured, increases accessibility of health care, controls skyrocketing costs, and addresses the denial of coverage based on pre-existing conditions. This legislation will put us on a new path where health care will be affordable to all and not just a luxury for some, and I am proud to support this historic health insurance reform legislation.